

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

JOSHUA LEE SMITH,)
Plaintiff,)
v.) Civil Action No. 7:22-cv-00238
TWIN COUNTY REGIONAL) By: Elizabeth K. Dillon
HEALTHCARE, et al.,) United States District Judge
Defendants.)

ORDER GRANTING AND DENYING MOTIONS TO DISMISS

For the reasons stated in the accompanying memorandum opinion, it is HEREBY ORDERED as follows:

1. Karl Hade's motion to dismiss (Dkt. No. 52) is GRANTED. Smith's ADA claim against Hade (Count Five) is DISMISSED WITH PREJUDICE;
2. The New River Valley Regional Jail Authority's (NRVRJA) motion to dismiss (Dkt. No. 69) is GRANTED IN PART and DENIED IN PART. The motion is GRANTED as to the negligence claim (Count Ten) and DENIED in all other respects. Smith's negligence claim against NRVRJA (Count Ten) is DISMISSED WITHOUT PREJUDICE;
3. Sheriff Kevin Kemp's motion to dismiss (Dkt. No. 71) is GRANTED IN PART AND DENIED IN PART. The motion is DENIED as to the ADA claim (Count Four) and GRANTED in all other respects. Smith's claims against Sheriff Kemp for excessive force (Count One), violation of substantive due process (Count Two), violation of procedural due process (Count Three), battery (Count Eight), assault (Count Nine), intentional infliction of emotional distress (Count Eleven), and negligent infliction of emotional distress (Count Twelve) are DISMISSED WITHOUT PREJUDICE;

4. Magistrate Jeffrey Wright's motion to dismiss (Dkt. No. 85) is GRANTED.

Smith's ADA claim (Count Five) against Wright is DISMISSED WITH PREJUDICE;

5. The Carroll County Sheriff's Office (CCSO) Deputy Defendants' (Deputies Keith Musser, Christopher Mabry, and Anthony Horton—the CCSO Deputy Defendants) motion to dismiss (Dkt. No. 97) is GRANTED IN PART and DENIED IN PART. The motion is GRANTED as to plaintiff's procedural due process claim (Count Three) and GRANTED as to any official capacity claims except plaintiff's ADA claim (Count Four). The motion is DENIED in all other respects. Smith's procedural due process claim against the CCSO Deputy Defendants (Count Three) is DISMISSED WITHOUT PREJUDICE, and any claims against the CCSO Deputy Defendants in their official capacity, except plaintiff's ADA claim, is DISMISSED WITHOUT PREJUDICE;

6. The NRVRJ Officer Defendants' (Mary Stewart, Jolen Mabry, Roberta Webb, Derek Trenar, Nikolas McGrady, Justin Archer, Veronica Loop, Derek Tolbert, Brian Cots, Melissa Edwards, John McNeely, Ashley Umberger, Shaun Benzel, and Benjamin Watkins) motion to dismiss (Dkt. No. 99) is DENIED;

7. The Nurse Defendants' (Laura Leonard, Crystal Coleman, and Teresa White) motion to dismiss (Dkt. No. 107) is DENIED;

8. Twin County Regional Healthcare's motion to dismiss (Dkt. No. 109) is DENIED; and

9. Dr. Maribel Rodriguez-Martinez's motion to dismiss (Dkt. No. 111) is DENIED.

10. The claims that remain in this case are as follows:¹

a. Count One (excessive force) against the CCSO Deputy Defendants;

¹ In addition to these claims, all claims against unidentified defendants (Two Unnamed Nurses A and B; Two Unnamed Deputies Y and Z; Three Unnamed Jail Officers 1, 2, and 3; Doe Officers 4 and 5; and Doe individuals 6–10) also remain pending.

- b. Count Two (substantive due process) against the CCSO Deputy Defendants, NRVNRJA, and the NRVNRJ Officer Defendants;
- c. Count Three (procedural due process) against NRVNRJA and the NRVNRJ Officer Defendants;
- d. Count Four (ADA) against the CCSO Deputy Defendants, Sheriff Kemp, Twin County Regional Healthcare, the Nurse Defendants, and Dr. Rodriguez-Martinez;
- e. Count Six (ACA) against Twin County Regional Healthcare;
- f. Count Seven (medical malpractice) against Twin County Regional Healthcare, the Nurse Defendants, and Dr. Rodriguez-Martinez;
- g. Count Eight (battery) against the CCSO Deputy Defendants;
- h. Count Nine (assault) against the CCSO Deputy Defendants;
- i. Count Ten (negligence) against the NRVNRJ Officer Defendants;
- j. Count Eleven (intentional infliction of emotional distress) against the CCSO Deputy Defendants, Twin County Regional Healthcare, the Nurse Defendants, and Dr. Rodriguez-Martinez; and
- k. Count Twelve (negligent infliction of emotional distress) against the CCSO Deputy Defendants, Twin County Regional Healthcare, the Nurse Defendants, and Dr. Rodriguez-Martinez.

The clerk of court is directed to transmit a copy of this order and the accompanying memorandum opinion to all counsel of record.

Entered: March 31, 2023.

/s/ Elizabeth K. Dillon
Elizabeth K. Dillon
United States District Judge